

GARDNER, CARTON & DOUGLAS

1301 K STREET, N.W.

SUITE 900, EAST TOWER

WRITER'S DIRECT DIAL NUMBER

JOCELYN R. ROY
202-408-7139

WASHINGTON, D.C. 20005

(202) 408-7100

FAX: (202) 289-1504

INTERNET: gcdlawdc@gcd.com

CHICAGO, ILLINOIS

February 18, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Hand Delivery

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: MM Docket No. 96-10

Dear Mr. Caton:

Enclosed, on behalf of Gleiser Communications, Inc., licensee of FM Station KDOK, Tyler, Texas, are an original and four copies of its Petition for Reconsideration of the January 17, 1997 Order released by the Chief, Allocations Branch in the above-referenced docket.

Should there be any questions in connection with this filing, please do not hesitate to contact the undersigned counsel.

Sincerely,


Jocelyn R. Roy

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEB 18 1997

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202 (b))	MM Docket No. 96-10
Table of Allotments)	RM 8738
Farmersville, Blue Ridge,)	RM 8799
Bridgeport, Eastland, Flower Mound,)	RM 8800
Greenville, Henderson, Jacksboro,)	RM 8801
Mineola, Mt. Enterprise, Sherman and)	
Tatum, Texas; and Ada, Ardmore,)	
and Comanche, Oklahoma)	

To: Chief, Allocations Branch

PETITION FOR RECONSIDERATION

Gleiser Communications, Inc. ("Gleiser"), licensee of FM radio station KDOK, Tyler Texas (the "Station"), through its attorneys and pursuant to Section 1.106 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),^{1/} hereby requests reconsideration of the *Report and Order* in the above-captioned docket, released by the Chief, Allocations Branch on January 17, 1997 (the "*Order*"). In support, Gleiser respectfully submits the following:

I. Background and Standing

1. This proceeding was initiated by *Notice of Proposed Rule Making* proposing the allocation of Channel 260C3 to Farmersville, Texas, as a first local service.^{2/} In response to the

^{1/} 47 C.F.R. § 1.106.

^{2/} 11 FCC Rcd 1790 (1990) ("*Notice*").

Notice and request for comment, several counterproposals^{3/} were received. The Commission released *Public Notices* regarding each counterproposal.^{4/} On May 24, 1996, a Joint Request for Settlement was filed proposing, *inter alia*, the allocation of Channel 221A at Farmersville, Texas in settlement of the respective proposals in this proceeding.^{5/} No *Public Notice* of the Settlement Proposal was issued. Accordingly, Gleiser had no opportunity to participate earlier in the proceeding. As detailed below, the allocation of Channel 221A at Farmersville, Texas in settlement of the respective proposals in this proceeding creates a 43.84 kilometers short-spacing to Gleiser's pending 221C2 application at Tyler and precludes a grant thereof. Therefore, Gleiser is a party aggrieved by the Commission's action in this proceeding and has standing to request reconsideration of this *Order* pursuant to Section 1.106 of the Rules.

2. Gleiser is presently licensed to operate on Channel 221A at Tyler, Texas. In MM Docket 94-66, Channel 221C3 was substituted for Channel 221A and the Station was ordered to change channels. Gleiser is currently operating on Channel 221C3 under Program Test Authority with facilities authorized pursuant to action in FCC File No. BMPH-950605IC. In order to accommodate the C3 upgrade at Tyler, stations KEMM, Channel 221A Commerce, Texas and KNES, Channel 221A, Fairfield, Texas, were ordered to Channels 277A and 256A respectively. Both stations subsequently vacated Channel 221. Gleiser filed an application (FCC File No. BPH960625IB), pursuant to Section 73.203 of the Commission's rules,^{6/} proposing a

^{3/} The specific facts of each counterproposal are not directly relevant to this Petition and have been omitted.

^{4/} See *Public Notices* Dated May 9, 1996 and October 8, 1996, Report Nos. 2130 and 2158, respectively.

^{5/} Joint Request for Settlement filed on May 24, 1996 by Hunt Broadcasting, Inc. Cowboy Broadcasting, L.L.C., Galen O. Gilbert, Greenville Broadcasting, Thomas S. Desmond and Farmersville Radio Group ("Settlement Proposal").

^{6/} 47 C.F.R. § 73.203.

one-step upgrade on Channel 221C2 at Tyler, on June 25, 1996. Gleiser supplemented its application on October 25, 1996 by providing a copy of a “Determination of No Hazard” issued on October 4, 1996 by the Federal Aviation Administration (“FAA”), and on November 27, 1996, in response to a Commission staff letter (Ref. 1800B3-KDH), dated October 30, 1996. The application is still pending.

II. Discussion

3. Although Gleiser’s one-step upgrade application was filed subsequent to the Joint Request for Settlement, the Commission did not issue notice that the allocation of Channel 221A was an integral part of the instant rule making proceedings. In addition, the *Order* makes absolutely no reference to Gleiser’s pending application, which was patently in conflict with the proposed settlement plan; nor does the *Order* discuss any options to resolve any potential conflicts with Gleiser’s application.

4. Gleiser is cognizant of the fact that the Commission retains the discretion to specify alternative channels in order to encourage settlement among parties in contested rule making proceedings;^{7/} however, the *Order* provides no acknowledgment that the allocation of Channel 221A would cause a conflict with any existing or pending application. Clearly, the Commission has, at a minimum, an obligation to make an effort to resolve any conflicts between parties when it has express knowledge that such conflicts will be created by its action or to provide notice of its intent to enable applicants such as Gleiser an opportunity to propose an

^{7/} *In the Matter of Conflicts Between Applicants and Petitions for Rule Making to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992), *recon.* 8 FCC Rcd 4743 (1993).

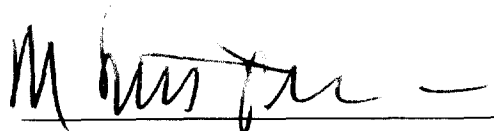
alternative solution on its own. Therefore, Gleiser was forced to rely on the Commission to recognize and give due consideration to its pending application. The failure to consider Gleiser's application in this proceeding warrants reconsideration of the *Order*.

WHEREFORE, Gleiser Communications, Inc. respectfully requests that the Commission grant its Petition for Reconsideration in this matter.

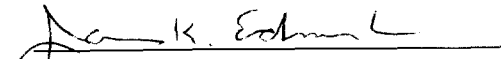
Respectfully submitted,

GLEISER COMMUNICATIONS, INC.

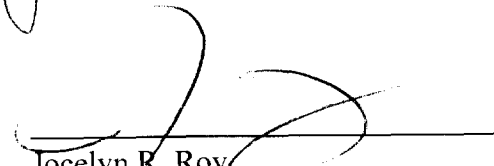
By:


M. Scott Johnson

By:


James K. Edmundson

By:


Jocelyn R. Roy

Its Attorneys

GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
(202) 408-7100

Dated: February 18, 1997

CERTIFICATE OF SERVICE

I, Barbara Haile, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 18th day of February, 1997, caused to be sent by hand, a copy of the Petition for Reconsideration of Gleiser Communications, Inc. to the following:

By Hand Delivery

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street NW, Room 554
Washington, DC 20554

John J. McVeigh, Esq.
Bernstein & McVeigh
1818 N Street NW #700
Washington, DC 20036

Counsel to Thomas S. Desmond

By First-Class Mail

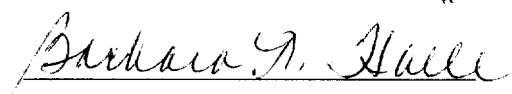
Mark N. Lipp, Esq.
Mullin, Rhyne, Emmons and Topel, P.C.
1225 Connecticut Avenue, NW, #300
Washington, D.C. 20036

Ashton R. Hardy, Esq.
Michael Lamers
Hardy & Carey, L.L.P.
111 Veterans Memorial Boulevard, #255
Metairie, LA 70005

Counsel to Farmersville Radio Group

Counsel to Hunt Broadcasting, Inc.
& Cowboy Broadcasting, L.L.C.

James P. Riley, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street -- 11th Floor
Rosslyn, VA 22209



Barbara N. Haile

Counsel to Galen O. Gilbert

Linda J. Eckard, Esq.
Mark Van Bergh
Roberts & Eckard, P.C.
1150 Connecticut Ave., NW, #1100
Washington, DC 20036

Counsel to Greenville Broadcasting